

REMARKS

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims and the following remarks.

Status of the Claims

Claims 1-3 are currently pending in the present application. The Office Action is non-final. Claims 2-3 have been amended and claim 1 is cancelled without prejudice or disclaimer. No new matter has been added by way of amendment, because the amendment further defines and clarifies the structures of the present invention and is supported by the present specification.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues Regarding Priority Statement

Applicants desire to obtain benefit of foreign priority under 35 U.S.C. § 119(a)-(d). Enclosed herewith is a certified English translation of the Japanese Patent Application No. 2002-239777 priority application filed on August 20, 2002. The same provides 35 U.S.C. § 112 support for the invention as instantly claimed. Additionally, the specification has been amended to include this priority information.

Applicants respectfully request reconsideration and that the enclosed documents be entered.

Rejections Under 35 U.S.C. § 102(b)

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Mark Doleman, et al., *Chromogenic Reagents*, December 1996, Vol. 121, pp.1775-1778(hereinafter “Doleman et al.”).

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Christian Reichardt et al., (Pyridinium N-phenolate betaine dyes and their application to the characterization of the polarity of solvents, Part 22. “Syntheses and UV/Vis spectroscopic properties of solvatochromic, halochromic, and chiro-solvatochromic pyridinium N-phenolate betaine dyes with four stereogenic centers”, *Liebigs Annalen/Recueil*, 1997, vol 4, page 707 to 720; hereinafter “Reichardt et al.”).

Applicants respectfully traverse. Applicants have cancelled claim 1 and amended claim 2 without prejudice or disclaimer. Applicants have cancelled claim 1 thus obviating the rejection to claim 1.

In regards to the remaining claims, the Examiner stated on page 10 of the present Office Action (dated July 18, 2007) that the elected Species E, where R¹ is an aromatic ethynyl group and R² - R¹² are as defined in claim 2, is allowable. The Examiner also indicated that none of the prior art references teach the optically compound where an aromatic ethynyl is bonded to a fluorescent substituent.

Based on the above, Applicants have amended claim 2, without prejudice or disclaimer, to recite the specific limitations within claim 2 that the Examiner indicated was allowable subject matter.

Therefore, Applicants respectfully request reconsideration and withdrawal of all the present rejections.

Obviousness-Type Double Patenting

Claims 1-3 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of co-pending U.S. Patent Application No. 10/591,920. Claim 1 has been cancelled herein without prejudice or disclaimer, thus obviating the rejection as to this claim. Applicants respectfully traverse the rejection as to the remaining claims as set forth herein.

According to MPEP 804 (I)(B)(1) (MPEP pg 800-17), “if a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.” The present application is the earlier of the two filed applications, filed February 17, 2005, while Patent Application No. 10/591,920 was filed on September 7, 2006.

Applicants respectfully request reconsideration and subsequent withdrawal of the provisional rejection of claims 2 and 3.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

CONCLUSION

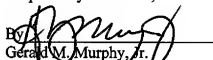
In view of the above remarks, it is believed that claims are allowable.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Paul D. Pyla Reg. No. 59,228 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: October 18, 2007

Respectfully submitted,

By 

Gerald M. Murphy, Jr.

Registration No.: 28,977

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicants

Attachment: English Translation of JP 2002-239777